

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7277 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and

MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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JAYESHBHAI SURABHAI THORUGH SURABHAI MAMAIYABHAI

Versus

BHARAT BHARTHI KARSHANBHARTHI

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Appearance:

MR CL SONI for Petitioner

MR NK MAJMUDAR for Respondent No. 2

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CORAM : MR.JUSTICE N.J.PANDYA and

MR.JUSTICE A.R.DAVE

Date of decision: 05/07/96

ORAL JUDGEMENT [ Per ; PANDYA,J ]

Admit. With the consent of the parties, matter is taken up for hearing today.

On last occasion, when the matter was before us in respect of Civil Application No. 4191/96, serious discussion had taken place and accompanying documents being zerox copies of the original papers pertaining to Irvin Group of Hospitals and it being teaching hospital, papers of M.P.Shah Medical College were the record and

proceedings required to be examined to ascertain as to whether evidence, in fact, was produced or not before the trial court.

Original record and proceedings are before us. We have gone through it. Except for the injury certificate exh.39, copy of FIR and panchanama and disability certificate given by Dr. Maru, no other documents have been produced.

The learned Judge of the Tribunal was, therefore, constrained to observe that there is no evidence with regard to hospitalisation. Nodoubt, that certificate exh.39 does reveal that patient was brought to the hospital on 28.3.1990 and had left it on his own by about 30.4.1990 and, therefore, it could have been argued that for the entire period, he was in hospital.

However, when documentary proof is available in this regard as produced along with said civil application, obviously it should be taken into consideration as those documents will help us to finally dispose of this matter.

Looking to the fact that the incident is of the year 1990 involving the boy aged about 5 to 7 years, the learned Judge Mr. Majmudar appearing for the respondents also has displayed exemplary fairness and has agreed to look at those documents and if the Court finds it proper, he left it to us whether to allow Civil Application No.4191/96 or not.

Apart from hospitalisation period, necessity for those documents which are produced with the said application is to determine the nature of injury. Ordinarily, it would appear that he was suffering from simple heel injury and hence he would not need hospitalisation. Hospital papers produced along with Civil Application clearly establishes that he had a crush injury of right heel and that can be gathered only from those documents. Exh.39 - injury certificate does not refer to this particular injury at all.

To further satisfy ourselves, we had requested Learned Advocate C.L.Soni to convey to his client Surabhai Mamaiyabhai, father of minor applicant, that he should remain present before the Court with said injured minor. Minor Jayesh is present in the Court with his father. We have ourselves seen his right foot and we find that he is able to walk about only with his toes and thus so far as his right leg is concerned, he is unable to bear any weight on the entire foot and stand as to

make good use of front portion of right foot and more particularly toes. Heel portion remains much above the ground as he is unable to bend and bear the weight.

This position has occurred because there was a injury just below malleolus to medial malleolus and his bone was exposed. The final outcome as could be seen from Dr. Maru's disability certificate is that his ankle joint is injured and there is bad scar left and there is reduction of lateral malleolus. This led to reduction in planter flexion of ankle joint by about 20%. Overall disability, therefore, assessed by him of that part of the body is 20%. Nodoubt, as rightly pointed out by learned advocate Mr.Majmudar that as per exh.42, both the sides have agreed to take over all body disability to be 10%. We will, therefore, proceed on that basis.

The discussion made, thus, makes it clear that the documents produced giving details of prolonged treatment starting from 28.3.1990 going upto 30.4.1990 and even couple of days thereafter, are required for final disposal of the matter and hence said Civil Application is required to be allowed and additional evidence is permitted to be produced and documents are permitted to be exhibited and accordingly they are exhibited and given exh.51 and for the aforesaid reasons, by separate order today, we have allowed aforesaid Civil Application No. 4191/96.

The documents being zerox copy of the original record of Irwin Group of Hospitals of Jamnagar- a govt. run hospital, has been agreed to be admitted in evidence and read as documents on record as per endorsement made by learned advocate Majmudar on behalf of respondents. To our mind, it is fair stand taken by learned Advocate Shri Majmudar keeping in view the object of rendering justice to the claimants of vehicular accident and particularly when a young boy of about 5 to 7 years is involved instead of prolonging the matter any further. This approach of learned advocate, in our opinion, serves the ends of justice eminently.

In view of the aforesaid additional evidence and particularly evidence as to hospitalization and disablement, when we turn to the order of the trial court, we find that the learned Judge has awarded lumpsum amount of Rs. 6000/- only which order has to be set aside and in its place, in keeping with the aforesaid material already on record before the Trial Court and additional material now being produced, we will have to assess the quantum afresh.

The learned Judge has gone mainly by the fact that there is no evidence whatsoever as to hospitalisation and therefore disablement certified by Dr. Maru and agreed to by both the sides to be fixed at 10%, cannot be considered. That aspect has already been taken care of.

Now, looking to the aforesaid papers, it is obvious that for a boy aged about 5 to 7 years, presence of family members is must. Mother, father and other members of family must have remained with the boy and, therefore, against their expenses, we award a sum of Rs.3000/. Towards medicine and other expenses, though the minor has been treated in the Govt. Hospital. However, looking to the high doses and latest variety of antibiotics like Cephalexin prescribed and has been actually administered as per those documents and, therefore, we award a further sum of Rs. 3000/ towards medical expenses.

Case papers and record of hospital indicate that on account of said heel injury which was not healing at all and was not responding to any treatment, minor had suffered a lot. On 29.3.1990 itself, he had 101 degree temperature and pulse rate was 160 per minute and pulse rate had gone up to 168 per minute, pus has developed in the injured site requiring heavy doses of antibiotics. By 5.4.1990 only, his condition had improved, but operation was required and operation was called for under general anaesthesia on or about 16.4.1990. Again there is reference to consent having been taken for anaesthesia on 23.4.1990 at page 16 of the case papers and he had to be administered sedatives right up to 24.4.1990 as could be seen from these papers. Finally, the skin grafting was done on 24.4.1990 and exposed bone could barely be covered. Hence, towards pain, shock and sufferings, we award a sum of Rs. 10,000/-.

Looking to the said agreement between the parties regarding disability at 10%, we would likely monthly income of the minor at Rs. 600/ and disability would work out at Rs. 60/ and that annual figure would come to Rs. 720/. As per the recent Supreme Court judgment reported in 1996 (5) JT (Supreme Court), multiplier up to 18 can be given and accordingly, multiplier of 18 is given which would give amount of Rs. 12,960/ under the said head.

The aforesaid monthly income we have taken to be the least possible income particularly in the background

of the fact that the father of the boy had agricultural lands to the extent of 12 Acres in Jamkhambhaliya taluka of Jamnagar District and has also business of selling the milk. If the son were to engage himself in that very business, certain contribution by way of personal supervision would be to that extent. Correspondingly, on account of disability, there will be reduction.

Towards loss of amenities of life and reduction in chances of marriage and general discomfort that he will be feeling, by way of noble compensation, Rs. 15,000/ is awarded. The total amount thus comes to Rs.43,960/ which is rounded off to Rs. 44,000/. The appellant claimant is entitled to get Rs. 44,000/ with costs and interest at the rate of Rs. 12% p.a.

From the aforesaid amount, sum of Rs. 12,000/ already paid to the minor claimant will have to be adjusted and balance amount to be deposited within 8 weeks from today. It is clarified that rate of interest awarded shall apply only upon remaining amount after adjusting said sum of Rs. 12,000/ and it shall be calculated accordingly.

The balance amount on being deposited by the respondent, shall be invested on long term basis up to the time minor attains age of 21 years and for that purpose, the claimant through his mother/father shall furnish proof of age in the form of birth certificate or record of school indicating his birth date and accordingly, the Tribunal shall invest the amount with a direction to accumulate interest thereon.

Appeal is allowed accordingly. No order as to costs.

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Please verify original for certified copy.

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